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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,274	03/18/2004	Eiji Kato	FY.51043US1A	5373

20995 7590 04/04/2008
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EXAMINER

PHAN, HAU VAN

ART UNIT	PAPER NUMBER
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3618

NOTIFICATION DATE	DELIVERY MODE
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04/04/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/803,274	Applicant(s) KATO ET AL.	
	Examiner Hau V. Phan	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 3,5 and 6 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-2,4,7-8,10-16,18-20,36-43 is/are allowed.
- 6) ☒ Claim(s) 21 and 24-34 is/are rejected.
- 7) ☒ Claim(s) 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment

1. The amendment filed on 1/11/2008 has been entered.

Claim Objections

2. Claim 23 is objected to under 37 CFR 1.75(c) as being in improper form because the claim can not depend of itself. Accordingly, the claim 23 not been further treated on the merits.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 21 and 24-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuta et al. (5,086,858) in view of Wagner et al. (6,729,830).**

Mizuta et al. in figures 1-5, disclose an off-road vehicle comprising a frame, a plurality of wheels (2, 3) arranged to support the frame, an internal combustion engine (8) having a crankshaft (18) configured to rotate. Mizuta et al. also disclose a transmission (12) having an output shaft on the left side (not number) arranged to transmit the rotation of the crankshaft to at least one of the wheels. Mizuta et al. also

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disclose a housing or a chamber (19, 20) configured to house at least a portion of the transmission (the output shaft can be considered a portion of the transmission). The housing has an air inlet duct (22) through which ambient air enters the housing and flows across the portion of the transmission and an air outlet duct (24) through which the air leaves the housing. The air inlet duct has an inlet opening (23). The outlet duct has an outlet opening, the inlet and outlet openings positioned higher than the wheels. Mizuta et al. fail to show first and second seats and the engine located between the first and second seats.

Wagner et al. in figure 1-5, teaches a wheeled work machine comprising an operator platform (26) having first and second seats. Wagner et al. also disclose an engine (24), which is located between the first and the second seats. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the off-road vehicle of Mizuta et al. with the wheeled work machine having first and second seats as taught by Wagner et al. in order to have a ability to carry more than one person to a work site.

Regarding claim 24, Mizuta et al. disclose at least a portion of the air outlet duct extends at about the same height as a cylinder of the engine.

Regarding claim 25, Mizuta et al. in combination with Wagner et al. disclose at least a portion of the air outlet duct that overlaps with a portion of at least one of the first and second seats, as viewed in a plan view.

Regarding claim 26, Mizuta et al. disclose at least a portion of the air outlet duct extending over the chamber or the housing.

Regarding claim 27, Mizuta et al. disclose at least a portion of the air inlet duct that overlaps with a cylinder block of the engine, when viewed in a side elevational view.

Regarding claim 28, Mizuta et al. disclose the inlet and outlet openings that are disposed higher than the housing.

Regarding claim 29, Mizuta et al. disclose at least a portion of the air inlet duct, which is positioned lower than the upper most surface of the wheels.

Regarding claim 30, Mizuta et al. disclose at least a portion of the air outlet duct extending at about the same height as a cylinder of the engine.

Regarding claim 31, Mizuta et al. in combination with Wagner et al. disclose at least a portion of the air outlet duct overlapping with a portion of at least one of the first and second seats, as viewed in a plan view.

Regarding claim 32, Mizuta et al. disclose at least a portion of the air outlet duct extending over the chamber.

Regarding claim 33, Mizuta et al. disclose at least a portion of the air inlet duct overlapping with a cylinder block of the engine, when viewed in a side elevational view.

Regarding claim 34, Mizuta et al. disclose the inlet and outlet openings, which are disposed higher than the chamber.

Allowable Subject Matter

2. Claims 1-2, 4, 7-8, 10-16, 18-20, 22 and 36-43 are allowed.

3. Claims 35 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments, see applicant remark pages 9-11, filed 2/6/2008, with respect to the rejection(s) of claim(s) 1-2, 4, 7-8, 10-16, 18-20, 22 and 36-42 under Mizuta et al. and Wagner et al. have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. Claims 1-2, 4, 7-8, 10-16, 18-20, 22 and 36-42 are allowed.

5. Regarding claim 21 and 23-34 applicant's arguments filed 2/6/2008 have been fully considered but they are not persuasive. In response to applicant's remark that Mizuta et al. disclose the inlet duct that will allow the water enter a housing of a belt. The examiner disagrees, because Mizuta et al. disclose a housing (20) having an inlet duct and an outlet duct. The housing and the duct have a cover (20) to protect a belt and pulleys and will not allow water to enter the housing.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the inlet opening of the inlet duct and the outlet opening of the outlet duct are positioned at elevations higher than the respective top surfaces of the wheels.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V. Phan whose telephone number is 571-272-6696. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hau V Phan/
Primary Examiner, Art Unit 3618